

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CLARENCE BROOKS,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-24-164-F
)	
JASON SEIGARS, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Clarence Brooks filed a complaint alleging violation of his civil rights. Doc. no. 1. Along with the complaint, plaintiff filed an Application for Leave to Proceed in Forma Pauperis. Doc. no. 2. The matter was referred to United States Magistrate Judge Amanda Maxfield Green in accordance with 28 U.S.C. § 636. Doc. no. 5.

On February 16, 2024, Magistrate Judge Green entered an order granting plaintiff's application. Doc. no. 6. In the order, Magistrate Judge Green required plaintiff to pay, on or before March 8, 2024, an initial partial filing fee of \$10.00. This amount represented "twenty percent (20%) of the greater of (1) the average monthly deposits, or (2) the average monthly balance in Plaintiff's prison accounts for the six-month period immediately preceding the filing of the complaint." *Id.*, p. 1 (citing 28 U.S.C. § 1915(b)(1)). Magistrate Judge Green advised plaintiff that by March 8, 2024, he must have "paid the initial partial filing fee" or "shown cause in writing for the failure to pay" or "this action will be subject to dismissal without prejudice to refiling." *Id.*, pp. 1-2.

On March 12, 2024, Magistrate Judge Green issued a Report and Recommendation, recommending the court dismiss this action without prejudice to refile. Doc. no. 8. Magistrate Judge Green found that dismissal was appropriate because plaintiff had not paid the initial partial filing fee and because plaintiff had not complied with the February 16, 2024 order.

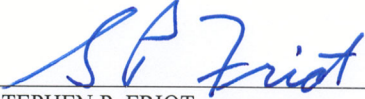
The court is in receipt of a filing from plaintiff which the court construes as an objection to Magistrate Judge Green's Report and Recommendation. Doc. no. 10. According to plaintiff, he did not receive the order granting him leave to proceed in forma pauperis. *Id.*, p.1. He also states that all the money he had was the \$50.00 in his pocket when he was arrested. *Id.*, p. 2. He requests the court to "have pity on [him]" and "not make [him] pay [the] initial partial filing fee of \$10.00." *Id.*

Pursuant to 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with Magistrate Judge Green's recommendation of dismissal without prejudice to refile. Although plaintiff alleges that he did not receive the February 16, 2024 order, the court's Local Civil Rules provide that "[p]apers sent by the court will be deemed delivered if sent to the last known address given to the court." LCvR5.4. The February 16, 2024 order was sent to the last known address given by plaintiff to the court. Notably, that address is the same address where the Report and Recommendation was mailed. The February 16, 2024 order has not been returned undeliverable. While plaintiff suggests that the Garfield County Jail may have "withheld" the February 16, 2024 order from him, doc. no. 10, p. 1, plaintiff has not proffered any evidence to support that suggestion. The court finds, pursuant to LCvR5.4, that the February 16, 2024 order is deemed delivered to plaintiff. Because plaintiff did not comply with the February 16, 2024 order by either paying the \$10.00 initial partial filing fee or showing cause in writing for his failure to pay, and plaintiff was advised in the February 16, 2024 order that this action was subject to dismissal without prejudice

to refiling for failure to comply, the court concludes that dismissal of this action without prejudice to refiling, pursuant to Rule 41(b), Fed. R. Civ. P., is appropriate. The court therefore accepts, adopts, and affirms the Report and Recommendation.

Accordingly, the Report and Recommendation (doc. no. 8) issued by United States Magistrate Judge Amanda Maxfield Green is **ACCEPTED, ADOPTED, and AFFIRMED**. Pursuant to Rule 41(b), Fed. R. Civ. P., this action is dismissed without prejudice to refiling. A judgment will issue separately.

DATED this 4th day of April, 2024.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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